

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

Appellant stopped work that day and resumed work on July 21, 2017. On July 19, 2017 the employing establishment executed an authorization for examination and/or medical treatment (Form CA-16) authorizing treatment for his claimed right shoulder injury.

On July 19, 2017 appellant was treated at an urgent care facility by Rishita N. Patel, an advanced practice registered nurse. She noted a history of injury that transpired on July 19, 2017 while pulling the start cord of a weed wacker. A July 19, 2017 right shoulder x-ray was negative. Ms. Patel diagnosed right shoulder sprain/strain and advised that appellant could perform light-duty work from July 19 to 21, 2017. Appellant was to wear a sling on his right arm, avoid repetitive grasping/pinching, and avoid pushing/pulling. Ms. Patel also imposed a 10-pound lifting restriction and precluded work at or above shoulder level. She completed a duty status report (Form CA-17) as well as the attending physician's report that accompanied the Form CA-16. On both form reports Ms. Patel indicated that appellant's diagnosed condition was employment related.

A July 21, 2017 duty status report (Form CA-17) from Geoffrey P. Robinson, a physician assistant, reported a July 19, 2017 date of injury and noted a diagnosis of sprain, and advised that appellant could work full-time limited duty with restrictions that were more restrictive than those of Ms. Patel. In July 28, 2017 follow-up treatment notes, he diagnosed right shoulder strain. Mr. Robinson provided additional follow-up treatment notes and duty status reports (Form CA-17) dated July 28 and August 4, 11, and 18, 2017. He continued to diagnose right shoulder strain. Mr. Robinson imposed a 35-pound restriction with respect to lifting and pushing/pulling. On August 11, 2017 he referred appellant for physical therapy treatment. Appellant began authorized physical therapy on August 16, 2017. Mr. Robinson continued to evaluate appellant through August 28, 2017, at which time he referred appellant to an orthopedist.

On August 29, 2017 Dr. Christopher M. Betz, an orthopedic surgeon, treated appellant for right shoulder pain. Findings on examination revealed restricted range of motion of the right shoulder, painful joints, and reduced abduction strength. X-rays of the right shoulder revealed no abnormalities. Dr. Betz diagnosed right rotator cuff tear and recommended a magnetic resonance imaging (MRI) scan.

In a development letter dated October 4, 2017, OWCP advised appellant that his claim was originally received as a simple, uncontroverted case which resulted in minimal or no time lost from work. It indicated that his claim was administratively handled to allow limited medical payments, but the merits of the claim had not been formally adjudicated. OWCP advised that, because the medical bills had exceeded \$1,500.00, his claim would be formally adjudicated. It further advised appellant of the deficiencies of his claim and indicated that additional medical evidence was necessary to establish his claim. OWCP afforded him 30 days to submit the necessary evidence.

A September 15, 2017 right shoulder MRI scan revealed a massive full-thickness tear involving the entire supraspinatus and infraspinatus tendons. There was also evidence of a superior subluxation of the humeral head and a full-thickness tear of the subscapularis tendon with dislocation of the long head biceps tendon.

On October 2, 2017 Dr. Betz noted that appellant complained of pain in the whole shoulder and noted that physical therapy had not relieved his symptoms. Findings on examination revealed

restricted range of motion of the right shoulder, painful joints, and reduced abduction strength. Dr. Betz also reviewed appellant's recent right shoulder MRI scan. He diagnosed tear of the right rotator cuff and recommended a rotator cuff repair.

OWCP also received additional physical therapy treatment records through September 10, 2017.

By decision dated November 13, 2017, OWCP accepted that the July 19, 2017 incident occurred as alleged and that a medical condition had been diagnosed. However, it denied appellant's traumatic injury claim, finding that he had not met his burden of proof to establish causal relationship between the diagnosed right rotator cuff tear and the accepted July 19, 2017 employment incident.

OWCP subsequently received a copy of appellant's July 19, 2017 urgent care treatment records signed by Ms. Patel, who diagnosed right shoulder sprain. It also received his July 21, 2017 initial treatment report from Mr. Robinson, who diagnosed right shoulder strain.

In a January 11, 2018 report, Dr. Betz noted that appellant had been under his care for right shoulder pain and noted that a September 15, 2017 right shoulder MRI scan revealed a full-thickness rotator cuff tear and he recommended surgery. He opined that as appellant did not have symptoms prior to the injury that it was highly likely that the employment incident was the cause of appellant's injuries.

On July 13, 2018 appellant requested reconsideration of OWCP's November 13, 2017 decision.

By decision dated August 17, 2018, OWCP denied modification of the November 13, 2017 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>3</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to

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<sup>2</sup> *Id.*

<sup>3</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.<sup>6</sup> Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>7</sup> The second component is whether the employment incident caused a personal injury.<sup>8</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the employment incident.<sup>9</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>10</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.<sup>11</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident.<sup>12</sup>

### **ANALYSIS**

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted July 19, 2017 employment incident.

The treatment records from Ms. Patel, a nurse, and Mr. Robinson, a physician assistant, are insufficient to satisfy appellant's burden of proof as neither individual is a physician as defined

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<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

<sup>7</sup> *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>10</sup> *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>11</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>12</sup> *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

under FECA.<sup>13</sup> Appellant's physical therapy treatment records are similarly insufficient to meet his burden of proof.<sup>14</sup>

An MRI scan of the right shoulder dated September 15, 2017 revealed a massive full-thickness tear involving the entire supraspinatus and infraspinatus tendons. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and a diagnosed condition.<sup>15</sup>

In reports dated August 29 and October 2, 2017, Dr. Betz treated appellant for right shoulder pain which began on July 19, 2017. He noted findings on examination and diagnosed tear of the right rotator cuff as confirmed by MRI scan. While Dr. Betz repeated the history of injury as reported by appellant, Dr. Betz did not provide his own opinion regarding whether appellant's condition was work related. The mere recitation of patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.<sup>16</sup> Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's reports are of limited probative value.<sup>17</sup>

On January 11, 2018 Dr. Betz opined that as appellant did not have symptoms prior to the injury that it was highly likely that the employment incident was the cause of appellant's injuries. He related appellant's current right shoulder condition to the employment injury, but his only rationale for doing so was that appellant had no symptoms prior to the employment injury. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relationship.<sup>18</sup>

The Board thus finds that appellant has not submitted sufficient medical evidence and has thus not met his burden of proof to establish that a right shoulder condition causally related to the accepted July 19, 2017 employment incident.<sup>19</sup>

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<sup>13</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

<sup>14</sup> *Id.*; *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

<sup>15</sup> *See J.M.*, Docket No. 17-1688 (issued December 13, 2018).

<sup>16</sup> *See J.G.*, Docket No. 17-1382 (issued October 18, 2017).

<sup>17</sup> *See A.B.*, Docket No. 16-1163 (issued September 8, 2017).

<sup>18</sup> *Kimper Lee*, 45 ECAB 565 (1994).

<sup>19</sup> The Board notes that the employing establishment issued appellant a signed Form CA-16 authorizing treatment for his July 19, 2017 right shoulder injury. The Board has held that where an employing establishment properly executes a CA-16 form, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. §§ 10.300, 10.304; *R.W.*, Docket No. 18-0894 (issued December 4, 2018).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted July 19, 2017 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 17, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board